

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN REYES,

Defendant.

Case No. 1:93-CR-16-01

Hon. Richard Alan Enslen

ORDER

Defendant Juan Reyes has applied for a certificate of appealability regarding this Court's earlier denial of his application for the writ of *audita querela*. (See Dkt. No. 526.) Upon review of the request, it does not appear that the statute, 28 U.S.C. § 2253, requires or authorizes the issuance of a certificate as to the denial of relief of a motion for *audita querela*. See *Early v. Lamanna*, 182 F.3d 917, 1999 WL 435156, **1 (6th Cir. June 17, 1999) (holding that certificate is unnecessary as to section 2241 petitions); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996) (same); *United States v. Schreiber*, 48 Fed. Appx. 481, 2002 WL 31049456, **1 (5th Cir. 2002) (holding that a certificate of appealability is unnecessary as to the appeal of the denial of an *audita querela* petition under 28 U.S.C. § 1651). Furthermore, even if the statute did authorize the issuance of a certificate of appealability as to the denial of an *audita querela* petition, the same would be denied because Defendant's motion is plainly meritless and does not warrant encouragement on appeal.

THEREFORE, IT IS HEREBY ORDERED that Defendant Juan Reyes' Application for Certificate of Appealability (Dkt. No. 528) is **DENIED** as to all issues asserted.

DATED in Kalamazoo, MI:
June 9, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE